

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**JUAN P. GUERRERO**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 1:07-cv-1010-LG-RHW**

**STEVE GARBER, et al.**

**DEFENDANTS**

**MEMORANDUM OPINION AND ORDER  
DISMISSING THE PLAINTIFF'S COMPLAINT**

The Plaintiff filed this complaint pursuant to 42 U.S.C. § 1983 and requested *in forma pauperis* status. On August 27, 2007, an order [8] was entered granting Plaintiff's request to proceed as a pauper. Also on August 27, 2007, an order [9] was entered directing the Plaintiff to file a written response, within twenty days. The Plaintiff was warned in this Court's order of August 27, 2007, that failure to timely comply with the requirements of the order may lead to the dismissal of his case. The Plaintiff failed to comply with this order.

On October 23, 2007, an order [13] was entered directing Plaintiff, within twenty days, to show cause why this case should not be dismissed for his failure to comply with the Court's August 27, 2007 order. In addition, Plaintiff was directed to comply with the order by filing his written response, within twenty days. The Plaintiff was warned in this Court's order of October 23, 2007, that failure to timely comply with the requirements of the order may lead to the dismissal of his case. On November 8, 2007, Plaintiff filed three documents in this case. Two of the documents [14, 16] were additional motions to proceed *in forma pauperis*. These motions are moot in light of the fact that Plaintiff has already been granted permission to proceed as a pauper in this case. The remaining document [15] filed on November 8, 2007, is a copy of Plaintiff's previously filed Acknowledgment of Receipt [5] of information regarding the Prison

Litigation Reform Act. Plaintiff has failed to file a written response as initially directed on August 27, 2007.

On January 2, 2008, an order was entered denying Plaintiff's additional *in forma pauperis* [14,16] motions. In addition, the order directed the Plaintiff to comply with the Court's orders of August 27, 2007, and October 23, 2007, by filing a written response as set forth in the orders, within fifteen days. The Plaintiff was warned that his failure to timely comply with any order of the Court may result in the dismissal of this case, without further notice.

Plaintiff has failed to comply with three Court orders. It is apparent from the Plaintiff's failure to communicate with this Court that he lacks interest in pursuing this claim.

This Court has the authority to dismiss an action for the Plaintiff's failure to prosecute under FED. R. CIV. P.41(b) and under its inherent authority to dismiss the action *sua sponte*. See *Link v. Wabash R.R.*, 370 U.S. 626, 629 (1962); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). The Court must be able to clear its calendars of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief, so as to achieve the orderly and expeditious disposition of cases. *Link*, 370 U.S. at 630. Such a "sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars" of the Court. *Id.* at 629-30.

The Plaintiff has not contacted this Court since November 8, 2007. The Court concludes that dismissal of this action for Plaintiff's failure to prosecute under FED .R. CIV. P. 41(b) is proper. Since the Defendants have never been called upon to respond to the Plaintiff's pleading, and have never appeared in this action, and since the Court has never considered the merits of Plaintiff's claims, the Court's order of dismissal will provide that dismissal is without prejudice.

*See Munday/Elkins Auto. Partners, Ltd. v. Smith*, No. 05-31009, 2006 WL 2852389, at \*2 (5th Cir. Oct. 2, 2006).

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff's Complaint shall be dismissed without prejudice. A Final Judgment in accordance with this Memorandum Opinion and Order will be entered.

**SO ORDERED AND ADJUDGED** this the 18<sup>th</sup> day of March, 2008.

s/ Louis Guirola, Jr.  
LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE